



## APPENDIX

## UNITED STATES CIRCUIT COURT OF APPEALS

## FOR THE SECOND CIRCUIT

WINTHROP TAYLOR,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**Answer to Petition for Review of Decree**

Comes now the Commissioner of Internal Revenue, by his counsel, Samuel O. Clark, Jr., Assistant Attorney General, and states that the petition for review of decree should be dismissed for the following reasons:

Section 1140 of the Internal Revenue Code <sup>1</sup> provides an indicated period of time, upon the occurrence of which the decision of the Board of Tax Appeals (now the Tax Court of the United States) becomes absolutely final without power in the Board of Tax Appeals or any other tribunal to modify it thereafter. It was held in *R. Simpson & Co. v. Commissioner*, 321 U. S. 225, that this statutory provision deprived even the Supreme Court of jurisdiction over a case after its denial of certiorari became final. *A fortiori*

<sup>1</sup> SEC. 1140. DATE WHEN BOARD DECISION BECOMES FINAL. The decision of the Board shall become final—

\* \* \* \* \*

(b) *Decision Affirmed or Petition for Review Dismissed.*—

\* \* \* \* \*

(2) *Petition for Certiorari Denied.*—Upon the denial of a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals; \* \* \*

Section 1005, 44 Stat. 110, of prior Revenue Acts, is identical.

it follows that the jurisdiction of this Court has likewise ended. See also *Monjar v. Commissioner*, 140 F. 2d 263 (C. C. A. 2d). *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 321 U. S. 238, relied upon by petition, is wholly inapplicable as it involved a "fraudulently begotten judgment."

For the above reasons this Court has no jurisdiction to review the decree.

(Sgd) SAMUEL O. CLARK, JR.  
Samuel O. Clark, Jr.,  
Assistant Attorney General.

